

## Family Rights and Safeguards

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*Who is responsible: Intake Coordinators, Service Coordinators and Early Intervention Service Providers*

SOUTH CAROLINA DEPARTMENT OF HEALTH AND HUMAN SERVICES

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### Requirements for Rights and Safeguards

The Federal and state laws and their regulations require that families are informed of their rights in all early intervention processes. The Service Coordinator will inform families of their right to the following:

- Receive Prior Written Notice (PWN) of actions that affect their child.
- Understand and consent to all activities and written records about their child.
- Information about their child and family is kept confidential and that they have access to that information, upon request.
- Ability to accept or decline services without jeopardy.
- Be informed of procedures for resolving complaints.

Families must be given a copy of family rights in the IDEA/Part C system beginning with referral and at all IFSP meetings. These rights are in the Family Guide to the IDEA/Part C System and are on the IDEA/Part C webpage for SCDHHS.

### Explaining Family Rights and Safeguards

The Intake Coordinator, Service Coordinator, and each Early Intervention Service (EIS) provider share responsibility for ensuring the family understands each right. The Family Guide to the IDEA/Part C System outlines the information that families need to understand at each step in the process, from referral through IFSP development and service implementation.

### Surrogate Parents

To ensure the rights of the child are protected, IDEA Part C must appoint a surrogate parent when:

- No parent can be identified or located.
- The child is a ward of the State.
- The parent requests a surrogate to represent the child in educational decisions due to health or military deployment.

A surrogate parent may be requested by either the parent, the Intake Coordinator, or the Service Coordinator. The appointment of a surrogate parent may not be utilized to circumvent the procedures for gaining parental consent for eligibility determination, evaluations, assessments, or any other early intervention process requiring consent.

To determine if a child is a ward of the state, the Service Coordinator must obtain a copy of the court order granting DSS legal custody of the child. If the Service Coordinator has the court order, they are not required to determine the status of the parents prior to naming a surrogate parent.

If a court has appointed a person to be guardian or given legal custody to someone, a surrogate parent is not required (e.g., a foster parent). Documentation of guardianship or legal custody must be maintained in the early intervention record.

All forms and instructions for requesting and appointment of surrogate parents can be found at <https://msp.scdhhs.gov/babynet/site-page/babynet-forms>.

If it is determined that a surrogate parent is needed for a child receiving IDEA/Part C services, the Intake Coordinator or Service Coordinator must complete the Assignment of Surrogate Parent form, attach required documentation, and forward it to IDEA/Part C State Office. IDEA/Part C must make reasonable efforts to ensure the assignment of a surrogate parent is made not more than 30 days after it is determined that the child needs a surrogate parent. The Intake Coordinator or Service Coordinator shall:

- Make a reasonable effort to locate the parent. Reasonable efforts include a combination of attempts that may include documented telephone calls, certified letters, visits to the parent's last known address, and documented contacts with relatives, neighbors, contacting the SC Department of Social Services for children referred under CAPTA, or other child-serving or social service agencies. Documentation of these attempts will be maintained in the child's early intervention record.
- Request appointment of a surrogate parent through IDEA/Part C State Office using the Assignment of Surrogate Parent form.
- Inform IDEA/Part C State Office when there is reason to believe that the surrogate parent is no longer eligible, has a conflict of interest, is not attending IFSP meetings, etc..

Additionally, a person selected as a surrogate must:

- Be at least 18 years old.
- Have no interest that conflicts with the interests of the child represented.
- Have knowledge and skills that ensure adequate representation of child, including a thorough knowledge of the child's educational needs, and to understand the cultural and linguistic background of the children they represent.
- Not be an employee of any agency or person involved in provision of early intervention services to the child or family. A person who otherwise qualifies to be a surrogate parent is not an employee solely because he or she is may be paid to serve as a surrogate parent.
- Preferably reside in the same geographic area as the child.

Appointment of and responsibilities as a surrogate parent are limited to IDEA/Part C activities. Surrogate parents appointed for purposes of the IDEA/Part C have no rights or responsibilities in other areas such as: care and maintenance; financial support of the child; custody of the child; foster home placement; or other matters that are not directly related to IDEA/Part C services, unless otherwise required or authorized by law. A person whose role is a caregiver, or whose contact is only incidental (e.g., babysitter caretaker, childcare worker) has not assumed the role or responsibility of a parent or guardian.

**Surrogate Parent Responsibilities.** The surrogate parent has the same rights as a parent for all purposes in the IDEA/Part C. A surrogate parent will:

- Visit the child and observe the child's development and environment.
- Attend the child's evaluations and assessments.
- Participate in the development of the child's IFSP
- Participate in development of Annual IFSPs and reviews as appropriate.
- Review the child's early intervention record to become familiar with the child as needed.
- Exercise independent judgment in pursuing the child's interests within early intervention.
- Represent the child within the IDEA/Part C System.

**Surrogate Parent Rights under IDEA/Part C.** The surrogate parent has the right to:

- Inspect, review, and obtain copies of all early intervention records.
- File a complaint and obtain a due process hearing.
- Receive written notice of actions proposed by the IFSP team.

- Procedural safeguards including the right to request an evaluation of the child.
- Confidentiality of identifiable information used or collected by the IDEA/Part C system or Service Coordinator.
- Receive written notices prior to any evaluation and changes in services.
- Represent the child in all matters relating to IDEA/Part C 's evaluation, assessment, and provision of services to the child.
- Upon termination of a surrogate, all IDEA/Part C information in the possession of the former surrogate shall be immediately returned to the Service Coordinator.

Termination of Surrogate Appointments. A surrogate parent appointment may be terminated when:

- The child is no longer eligible for IDEA/Part C.
- The surrogate parent is no longer willing to serve
- The parent who was previously unknown or unavailable is now known or available.
- Parent revokes consent given for a surrogate parent.
- The interest of the surrogate conflicts with the interest of the child entrusted to the surrogate parent.
- When IDEA/Part C has reason to believe that a surrogate parent is not representing the child, or the surrogate parent has a conflict of interest.
- The surrogate parent is no longer eligible under the eligibility criteria set out in these guidelines.
- The surrogate parent has threatened the wellbeing of the child or the surrogate parent has violated minimum standards of practice.

Termination of the appointment of a surrogate parent must be justified through documentation of inappropriate conduct such as absences from scheduled meetings, failure to complete trainings or learn about the child. If a surrogate parent wishes to stop serving, the surrogate parent should notify the Service Coordinator in writing at least 15 calendar days before terminating services as a surrogate parent.

## Prior Written Notice and Meeting Notification (PWN)

PWN lets the parent know in advance when a meeting needs to be scheduled, or something in the child's IFSP or services will be changed.

### Responsibility of Intake Coordinator and Service Coordinator

- PWN is provided at least seven calendar days in advance to ensure the parent will be able to attend or participate.
- Check all appropriate actions that apply for the date, time, and location listed on the form and check the appropriate meeting purpose. If meeting purpose is not listed select "other" on the form and include the meeting purpose.
- PWN is still needed if a child is found ineligible for IDEA/Part C or if a child has an unplanned exit.
- The Intake Coordinator and Service Coordinator shall maintain a hardcopy of the PWN in the child's IDEA/Part C educational record, and document in BRIDGES that the parent has been provided with PWN for each required activity.

### Responsibility of EIS Provider

- An EIS provider may not initiate any change to services on an IFSP, or refuse to provide services on the IFSP, without first contacting the Service Coordinator. The parent must be given PWN of an IFSP review and provide consent to the IFSP changes before the EIS provider initiates a service change.
- Any requests from the parent to an EIS provider to initiate or change a service must first be communicated to the Service Coordinator.

- EIS providers will not be reimbursed for provision of any change in services before the parent receives PWN and consents to the changes in the IFSP.

## Native Language/Preferred Mode of Communication

The parent's native language or preferred mode of communication must be accommodated in all notices, consents, copies of screening, evaluation, and assessment results, the IFSP, and delivery of services. The child's native language or preferred mode of communication must be accommodated in evaluations and assessments if developmentally appropriate to do so.

### Responsibility of Intake Coordinator and Service Coordinator

The responsibility of the Intake Coordinator and the Service Coordinator is to ensure that foreign language interpretation, foreign language translation, sign language interpretation, or adapted written materials are available to the parent:

- In the provision of all early intervention services on the IFSP.
- During parent education activities and materials.
- When the parent requests to examine and/or receive a copy of records
- To ensure such supports are designated on the IFSP.

### Responsibility of EIS Provider

To ensure provision of foreign language interpretation, foreign language translation, sign language interpretation, or adapted written materials as part of each EIS service the provider renders to the family.

## Written Consent

The parent's written, informed consent must be documented as appropriate through use of IDEA/Part C Consent forms for evaluation, placement, services, and system of payments.

### Responsibility of Intake Coordinator and Service Coordinator

- To ensure the family provides written consent prior to each initial and annual screening, evaluation, assessment, and initiation of an IFSP service, and prior to use of insurance resources.
- The Intake Coordinator and Service Coordinator shall maintain a hardcopy of the document in the child's IDEA/Part C educational record, and document in BRIDGES that the parent has been provided or declined written consent for each required activity.

### Responsibility of EIS Provider

EIS providers will not be reimbursed for provision of any services before the parent provides consent to receive the service.

## Confidentiality and Release of Information

The parent's written, informed consent must be documented as appropriate through the use of IDEA/Part C Consent forms for requesting and releasing information from the child's IDEA/Part C early intervention record.

### Responsibility of Intake Coordinator and Service Coordinator

- The Intake Coordinator and Service Coordinator must ensure the family signs the consent to release and/or obtain information prior to the initial IFSP and each annual review of the plan, or more frequently as appropriate (e.g., child begins seeing a new primary care provider).

- The Intake Coordinator and Service Coordinator will use only the child's BRIDGES ID number in electronic correspondence, including requests to the BRIDGES Help Desk.

#### **Responsibility of EIS Provider**

The EIS provider will use only the child's BRIDGES ID number in electronic correspondence, including requests to the BRIDGES Help Desk.

### **Examination of Records**

The parent has the right to examine their child's IDEA/Part C records, request copies of the record or any portion thereof, and to file an amendment of any information in the record the parent finds to be in error.

#### **Responsibility of Intake Coordinator, Service Coordinator, and EIS Provider**

Early intervention records kept by Intake Coordinators, Service Coordinators, and EIS providers are confidential. The parents of the eligible child must be given the opportunity to inspect and review all records upon request.

### **Accepting or Declining Services without Jeopardy**

EIS services cannot be initiated without the written consent of the parent to do so. The parent can decline one service on the IFSP and still receive all services for which consent was provided.

#### **Responsibility of Service Coordinator**

- The Service Coordinator shall maintain a hardcopy of the IFSP Consent and Team Signatures form in the child's IDEA/Part C educational record. The Service Coordinator will document in BRIDGES that the parent has accepted or declined written consent for services on the IFSP.
- If the parent declines all services on the IFSP, the Service Coordinator must complete the PWN form explaining why IDEA/Part C services cannot be initiated.

#### **Responsibility of EIS Provider**

Early Intervention Services may be declined after first accepting the service without jeopardizing other early intervention services.

### **Complaints**

The parent has the right to informal and formal ways of resolving a dispute with IDEA/Part C, Intake Coordinators, Service Coordinators, and EIS providers.

#### **Responsibility of Intake Coordinator, Service Coordinator, and EIS Provider**

The Intake Coordinator, Service Coordinator, and EIS provider will explain to families that if they are not satisfied or if the EI team does not agree on plans and services, the family has the right to submit complaints.

### **Notification of Rights and Safeguards**

#### **Responsibility of Intake Coordinator, Service Coordinator, and EIS Provider**

The Intake Coordinator, Service Coordinator, and/or EIS provider will explain rights and safeguards using the Family Guide to the IDEA/Part C System.